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NORTHERN DISTRICT OF CALIFORNIA

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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

SC

CHRISTOPHER RIPPEL on behalf of himself and  
all others similarly situated,

Plaintiff,

v.

SAMSUNG ELECTRONICS CO., LTD.;  
SAMSUNG SEMICONDUCTOR, INC.;  
HITACHI, LTD.; HITACHI AMERICA, LTD.;  
HITACHI ELECTRONIC DEVICES (USA), INC.;  
HYNIX SEMICONDUCTOR, INC.; HYNIX  
SEMICONDUCTOR AMERICA, INC; MICRON  
SEMICONDUCTOR PRODUCTS, INC; MICRON  
TECHNOLOGY, INC.; MITSUBISHI ELECTRIC  
CORP.; MITSUBISHI ELECTRIC AND  
ELECTRONICS U.S.A., INC.; RENESAS  
TECHNOLOGY AMERICA, INC.; RENESAS  
TECHNOLOGY CORPORATION; TOSHIBA  
CORPORATION; TOSHIBA AMERICA, INC.;  
TOSHIBA AMERICA ELECTRONIC  
COMPONENTS, INC.; WINBOND  
ELECTRONICS CORPORATION; and  
WINBOND ELECTRONICS CORPORATION  
AMERICA,

Defendants.

Case No.  
07 2066

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

E-Filing

Plaintiff Christopher Rippel ("Plaintiff"), individually and on behalf of the class  
described below, brings this action for injunctive relief and treble damages against Defendants,

1 and demanding a trial by jury, complains and alleges on information and belief to all matters  
2 except those stated in paragraph 7, which are based on personal knowledge, as follows:

### 3 NATURE OF THE ACTION

4 1. Plaintiff brings this lawsuit as a class action on behalf of individuals and  
5 entities who indirectly purchased Flash Memory from Defendants, their subsidiaries, agents, or  
6 co-conspirators, during the period from at least January 1, 1999 through the date of class  
7 certification (the "Class Period").

8 2. As used herein, the term "Flash Memory" means all types of Flash  
9 Memory sold during the Class Period, including AND, NAND, and NOR technologies. For  
10 purposes of this Complaint, Flash Memory excludes all types of static random access memory  
11 ("SRAM") or dynamic random access memory ("DRAM") sold during the Class Period.

12 3. During the Class Period, Defendants' collusive behavior inflated the price  
13 of Flash Memory. In particular, Defendants participated in cartel behavior to fix the prices of  
14 these products. Because of Defendants' unlawful conduct and conspiracy, Plaintiff and other  
15 members of the Class paid artificially inflated prices for Flash Memory. Plaintiff and other  
16 members of the Class who purchased these products have been damaged by Defendants' illegal  
17 actions.

### 18 JURISDICTION AND VENUE

19 4. This complaint is brought pursuant to Section 16 of the Clayton Act,  
20 15 U.S.C. § 26, to obtain injunctive relief for violations of Section 1 of the Sherman Act,  
21 15 U.S.C. § 1, to recover damages and other equitable relief under state antitrust, consumer  
22 protection, and common laws, and to recover the cost of suit, including reasonable attorneys'  
23 fees, against Defendants for the injuries sustained by Plaintiff and the members of the Class by  
24 reason of Defendants' legal violations.

25 5. The Court has jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1337 and  
26 Sections 4 and 16 of the Clayton Act, 15 U.S.C. §§ 15 and 26. The Court also has jurisdiction  
27 over this action pursuant to 28 U.S.C. § 1332(d) as there are members of the Class who are  
28 citizens of different states than the Defendants and the amount in controversy for the Class

1 exceeds \$5 million. This Court has *in personam* jurisdiction over each of the Defendants because  
2 each was engaged in an illegal price-fixing scheme and conspiracy that was directed to and/or  
3 caused injury to persons or entities residing in, located in, or doing business in this District and  
4 throughout the United States.

5           6. Venue is proper in this District under 15 U.S.C. § 22 and 28 U.S.C. § 1391  
6 because one or more Defendants reside, transact business, or are found within this District, and a  
7 substantial part of the events giving rise to the claims arose in this District. California is a major  
8 center of the international technology industry. Defendants, many of whom are headquartered or  
9 base their operations in the Northern District of California, together with their co-conspirators,  
10 participated in a conspiracy substantially in the State of California, to fix or maintain the prices of  
11 Flash Memory.

## 12 THE PARTIES

### 13 A. The Plaintiff

14           7. Plaintiff Christopher Rippel indirectly purchased Flash Memory in the  
15 State of California, including a cell phone, flash memory cards, USB jump drives, and digital  
16 cameras during the Class Period, for his use and not for resale, and was injured as a result of  
17 Defendants' illegal conduct.

### 18 B. The Defendants

19           8. Defendant Samsung Electronics Co. Ltd. is a business entity organized  
20 under the laws of South Korea. During the time period covered by this Complaint. Samsung  
21 Electronics Co. Ltd. manufactured, sold, and distributed Flash Memory to customers throughout  
22 the United States.

23           9. Defendant Samsung Semiconductor, Inc., a wholly owned and controlled  
24 subsidiary of Samsung Electronics Co. Ltd., is a corporation organized under the laws of  
25 California. During the time period covered by this Complaint, Samsung Semiconductor, Inc. sold  
26 and distributed Flash Memory to customers throughout the United States. Samsung Electronics  
27 Co. Ltd., and Samsung Semiconductor, Inc. are referred herein collectively as "Samsung."  
28

10. Defendant Hitachi, Ltd. is a business entity organized under the under the laws of Japan. During the time period covered by this Complaint, Hitachi, Ltd. manufactured, sold, and distributed Flash Memory to customers throughout the United States.

11. Defendant Hitachi America, Ltd., a wholly owned and controlled subsidiary of Hitachi, Ltd., is a corporation organized under the laws of New York. During the time covered by this Complaint, Hitachi America, Ltd. sold and distributed Flash Memory to customers throughout the United States.

12. Defendant Hitachi Electronic Devices (USA), Inc., a wholly owned and controlled subsidiary of Hitachi, Ltd., is a corporation organized under the laws of Delaware. Hitachi, Ltd., Hitachi America, Ltd., and Hitachi Electronic Devices (USA), Inc. are referred herein collectively as "Hitachi."

13. Defendant Hynix Semiconductor, Inc. is a business entity organized under the laws of South Korea. During the time period covered by this Complaint, Hynix Semiconductor, Inc. manufactured, sold, and distributed Flash Memory to customers throughout the United States.

14. Defendant Hynix Semiconductor America, Inc., a wholly owned and controlled subsidiary of Hynix Semiconductor, Inc., is a corporation organized under the laws of California. During the time period covered by this Complaint, Hynix Semiconductor America, Inc. sold and distributed Flash Memory to customers throughout the United States. Hynix Semiconductor, Inc. and Hynix Semiconductor America, Inc. are referred herein collectively as "Hynix."

15. Defendant Micron Technology, Inc. is a corporation organized under the laws of Delaware. During the time period covered by this Complaint, Micron Technology, Inc. manufactured, sold, and distributed Flash Memory throughout the United States.

16. Defendant Micron Semiconductor Products, Inc., a wholly owned and controlled subsidiary of Micron Technology, Inc., is a corporation organized under the laws of Idaho. During the time period covered by this Complaint, Micron Semiconductor Products, Inc. sold and distributed Flash Memory to customers throughout the United States. Micron

1 Technology, Inc. and Micron Semiconductor Products, Inc. are referred herein collectively as  
2 "Micron."

3 17. Defendant Mitsubishi Electric Corporation is a business entity organized  
4 under the laws of Japan. During the time period covered by this Complaint, Defendant  
5 Mitsubishi Electric Corporation, Inc. manufactured, sold, and distributed Flash Memory to  
6 customers throughout the United States.

7 18. Defendant Mitsubishi Electric & Electronics USA, Inc., a wholly owned  
8 and controlled subsidiary of defendant Mitsubishi Electric Corporation, is a corporation organized  
9 under the laws of Delaware. During the time period covered by this Complaint, Defendant  
10 Mitsubishi Electric & Electronics USA, Inc. sold and distributed Flash Memory to customers  
11 throughout the United States. Mitsubishi Electric Corp. and Mitsubishi Electric & Electronics  
12 USA, Inc. are referred herein collectively as "Mitsubishi." In or about October 2002, Hitachi and  
13 Mitsubishi ceased manufacturing Flash Memory and transferred this business to Renesas.

14 19. Defendant Renesas Technology Corporation is a business entity organized  
15 under the laws of Japan. During the time period covered by this Complaint, Renesas Technology  
16 Corporation sold and distributed Flash Memory to customers throughout the United States.

17 20. Defendant Renesas Technology America, Inc., a wholly owned and  
18 controlled subsidiary of Renesas Technology Corporation, is a corporation organized under the  
19 laws of Delaware. During the time period covered by this Complaint, Renesas Technology  
20 America, Inc. sold and distributed Flash Memory to customers throughout the United States.  
21 Renesas Technology Corporation and Renesas Technology America, Inc. are referred herein  
22 collectively as "Renesas."

23 21. Defendant Toshiba Corporation is a business entity organized under the  
24 laws of Japan. During the time period covered by this Complaint, Toshiba Corporation  
25 manufactured, sold, and distributed Flash Memory to customers throughout the United States.

26 22. Defendant Toshiba America, Inc., a wholly owned and controlled  
27 subsidiary of Toshiba Corporation, is a corporation organized under the laws of Delaware.  
28

1 During the time period covered by this Complaint, Toshiba America Corporation sold and  
2 distributed Flash Memory to customers throughout the United States.

3 23. Defendant Toshiba America Electronic Components, Inc., a wholly owned  
4 and controlled subsidiary of Toshiba Corporation, is a corporation organized under the laws of  
5 California. During the time covered by this Complaint, Toshiba America Electronic Components,  
6 Inc. sold and distributed Flash Memory to customers throughout the United States. Toshiba  
7 Corporation, Toshiba America, Inc., and Toshiba America Electronic Components, Inc. are  
8 referred herein collectively as "Toshiba."

9 24. Defendant Winbond Electronics Corporation is a business entity organized  
10 under the laws of Taiwan. During the time period covered by this Complaint, Winbond  
11 Electronic Corporation manufactured, sold, and distributed Flash Memory to customers  
12 throughout the United States.

13 25. Defendant Winbond Electronics Corporation America, Inc., a wholly  
14 owned and controlled subsidiary of Winbond Electronics Corporation, is a corporation organized  
15 under the laws of Delaware. During the time period covered by this Complaint, Winbond  
16 Electronics Corporation America, Inc. sold and distributed Flash Memory to customers  
17 throughout the United States. Winbond Electronics Corporation and Winbond Electronics  
18 Corporation America, Inc. are referred herein collectively as "Winbond."

19 **C. Co-Conspirators**

20 26. Defendants, along with certain other corporations, entities, and persons are  
21 co-conspirators in the violations and cartel behavior alleged in this Complaint. These co-  
22 conspirators have performed acts and made statements in furtherance of the antitrust violations  
23 and conspiracies alleged herein.

24 27. At all relevant times, each Defendant ratified and/or authorized the  
25 wrongful acts of each of the other Defendants. Defendants, and each of them, are individually  
26 sued as participants and as aiders and abettors in the improper acts, plans, schemes, and  
27 transactions that are the subject of this complaint. Defendants, and each of them, participated as  
28 members of the conspiracy or acted with or in furtherance of it, or aided or assisted in carrying



1 out its purposes alleged in this Complaint, and have performed acts and made statements in  
 2 furtherance of the violations and conspiracy.

### 3 CLASS ACTION ALLEGATIONS

4 28. Plaintiff brings this action both on behalf of himself and on behalf of the  
 5 following Class pursuant to Federal Rules of Civil Procedure 23(a), 23(b)(2), and 23(b)(3):

6 All persons and entities currently residing in the United States who,  
 7 from January 1, 1999 through the date of class certification,  
 8 indirectly purchased Flash Memory from the Defendants, in the  
 9 United States, for their own use and not for resale. Excluded from  
 10 this Class are the Defendants; their parents, predecessors,  
 11 successors, subsidiaries, units, divisions, employees, officers,  
 12 directors; co-conspirators; government entities; and any and all  
 13 judges and justices (and members of their immediate families)  
 14 assigned to hear any aspect of this case.

15 29. This action has been brought and may be properly maintained as a class  
 16 action pursuant to Federal Rule of Civil Procedure 23 for the following reasons:

17 a. The Class is ascertainable and there is a well-defined community of  
 18 interest among the members of the Class;

19 b. Based upon the nature of the trade and commerce involved and the  
 20 number of indirect purchasers of Flash Memory, Plaintiff believes that the members of the Class  
 21 number in the hundreds of thousands, and therefore is sufficiently numerous that joinder of all  
 22 Class members is not practicable;

23 c. Plaintiff's claims are typical of the claims of the members of the  
 24 Class because Plaintiff indirectly purchased Flash Memory from one or more of the Defendants  
 25 or their co-conspirators, and therefore Plaintiff's claims arise from the same conduct giving rise to  
 26 the claims of the members of the Class and the relief sought is common to the Class;

27 d. The following questions of law or fact, among others, are common  
 28 to the members of the Class:

i. whether Defendants formed and operated a combination or  
 conspiracy to fix, raise, maintain, or stabilize the prices of Flash Memory;

ii. the nature and character of the acts done in furtherance of  
 the conspiracy;

- iii. whether the combination or conspiracy caused Flash Memory prices to be higher than they would have been in the absence of Defendants' conduct;
  - iv. whether Defendants' conduct caused injury to the business or property of Plaintiff and the members of the Class;
  - v. the appropriate measure of the amount of damages suffered by the Class;
  - vi. the duration of Defendants' combination or conspiracy;
  - vii. the identities of the co-conspirators;
  - viii. whether Defendants' illegal acts continue, justifying the entry of an injunction prohibiting such conduct to continue;
  - ix. whether Defendants' conduct violates Section 1 of the Sherman Act, 15 U.S.C. § 1;
  - x. whether Defendants' conduct violates California Business and Professions Code sections 16720 and 17200;
  - xi. whether Defendants' conduct violates the antitrust, unfair competition, and common laws of the states as alleged in the Fourth Claim for Relief below; and
  - xii. whether Defendants actively concealed the conspiracy from Plaintiffs and other Class members;
- e. These and other questions of law and fact are common to the members of the Class and therefore predominate over any questions affecting only individual members of the Class;
- f. Plaintiff will fairly and adequately protect the interests of the Class in that Plaintiff has no interests that are antagonistic to other members of the Class;
- g. Plaintiff has retained counsel competent and experienced in the prosecution of antitrust litigation and class actions to represent himself and the Class;
- h. A class action is superior to other available methods for the fair and efficient adjudication of this dispute because individual joinder of all damaged Class members is impractical. The damages suffered by individual Class members are relatively small. Thus,



1 absent the availability of Rule 23's class action procedures, it is not feasible for Class members to  
2 sue solely on their own behalf. Individual litigation presents the potential for inconsistent or  
3 contradictory judgments and will also greatly magnify the delay and expense to all parties and to  
4 the judicial system. Therefore, using class action procedures presents far fewer case management  
5 difficulties and will provide the benefits of a single adjudication, economies of scale, and the  
6 supervision by a single court;

7 i. in the absence of a class action, Defendants will be unjustly  
8 enriched because they will be able to retain the benefits of their wrongful conduct; and

9 j. the claims in this case are also properly certifiable under the laws of  
10 the State of California, and of the other individual states identified below.

#### 11 **INTERSTATE TRADE AND COMMERCE**

12 30. During the time period covered by this Complaint, Defendants and their  
13 co-conspirators sold and distributed Flash Memory to and throughout the United States.  
14 Defendants and their co-conspirators manufactured, sold, and shipped Flash Memory in a  
15 continuous and uninterrupted flow of interstate and international commerce. During each year of  
16 the Class Period, total sales of Flash Memory were in the billions of dollars.

#### 17 **FACTUAL ALLEGATIONS**

18 31. Flash Memory is a type of electronic memory chip with a read-only  
19 memory that retains its data when the power is turned off and that can be electronically erased  
20 and reprogrammed without being removed from the circuit board. Flash Memory is non-volatile,  
21 meaning that it does not need continuous power to maintain the stored information. Flash  
22 Memory is produced in the form of an integrated circuit, which is used in a variety of  
23 applications, including memory cards, digital cameras, USB storage devices, portable music  
24 players, mobile wireless technology, game consoles, fax machines, and personal computers. It is  
25 also packaged as stand-alone chips for circuit board mounting. For example, several years ago,  
26 FLASH BIOS ("Basic Input/Output System") chips replaced ROM BIOS chips in PCs so that the  
27 BIOS could be updated in-place instead of being removed and replaced.

1           32.     “Flash memory” was a term coined by Toshiba to express how fast it could  
2 be erased, that is, in a flash.

3           33.     Non-Volatile Memory (“NVM”) is computer memory that can retain the  
4 stored information even when not powered. Examples include, in addition to flash memory,  
5 most types of hard disks, and optical disc drives. NVM is usually used for secondary storage or  
6 long term storage. The most widely used primary storage is volatile RAM, meaning when the  
7 computer is shut down anything contained in RAM is lost.

8           34.     BIOS is built-in software that determines what a computer can do without  
9 accessing programs from a disk. On personal computers, BIOS contains all the code required to  
10 control the keyboard, display screen, disk drives, serial communications, and a number of  
11 miscellaneous functions.

12           35.     NOR and NAND are flash memory chips constructed of either NOR or  
13 NAND logic gates. Electronic logic gates are a collection of transistors and resistors that  
14 implement Boolean logic operations in a circuit. Transistors make up logic gates. Logic gates  
15 make up circuits. Circuits make up electronic systems. NOR chips function like a computer’s  
16 main memory, while NAND works like a hard disk. For example, in a digital camera, NOR flash  
17 memory contains the camera’s internal software, while NAND flash memory is used to store the  
18 images.

19           36.     A logic gate is an elementary building block of a digital circuit. There are  
20 seven logic gates: AND, OR, XOR, NOT, NAND, NOR, and XNOR. Most logic gates have two  
21 input terminals and one output terminal. Every terminal is in one of two binary conditions that is  
22 represented by different voltage.

23           37.     NOR flash memory was developed by Intel in 1988. NOR flash memory  
24 supports one-byte random access and “execute in place” (XIP), which means machine  
25 instructions can be obtained and executed directly from flash memory without going into main  
26 memory (DRAM) first as is required with NAND flash memory. NOR flash memory has a  
27 lifespan of about 100K write cycles. As with all flash memory, the cells must be erased in large  
28

1 blocks before being written. Erasing a block of typically 16KB takes several seconds, but reading  
2 and writing one byte at a time is very fast.

3 38. NAND flash memory was developed by Toshiba a year after Intel's NOR  
4 flash memory. NAND flash memory functions like a disk rather than memory. Flash Translation  
5 Layer ("FTL") software makes flash look like a disk drive to the operating system. "Reads and  
6 writes" are sector-sized blocks of 512 bytes; however, typically, a 2KB page of four blocks are  
7 read and written at one time. Before writing, cells are erased in blocks ranging from 16KB to  
8 128KB. Less expensive than NOR, NAND flash memory can be rewritten up to a million times,  
9 and erasing and writing NAND is faster than NOR.

10 39. AND is another standalone NAND-like chip. Hitachi and Mitsubishi  
11 manufactured, sold, and distributed AND. Renesas, a product of the merger between Hitachi and  
12 Mitsubishi, also produces AND and AG-AND chips.

13 40. The Flash Memory industry is conducive to the type of cartel activity  
14 alleged here. Flash Memory is a homogenous product purchased by Plaintiff and members of the  
15 Class primarily on the basis of price. In addition, the Flash Memory industry is highly  
16 concentrated, with Defendants accounting for almost all Flash Memory sales in the United States,  
17 with Samsung being the clear market leader. According to the 2006 "Memory Market  
18 Backgrounder" available on Samsung's website, the market shares of the leading Flash Memory  
19 manufacturers in 2005 were: Samsung: 52.9%, Toshiba: 21.9%, Hynix: 12.7%, Renesas:  
20 6.8%, and Micron: 2.2%. These five companies controlled 96.5% of the Flash Memory market.

21 41. Entry into Flash Memory production is subject to high manufacturing and  
22 technological barriers. Efficient manufacturing plants are large and costly, and viable entry also  
23 requires firms to undertake significant research and development expenses.

24 42. Numerous industry trade organizations facilitate Defendant's Flash  
25 Memory cartel activities. Defendants are members of JEDEC Solid State Technology  
26 Association, a standard-setting organization. Hynix and Micron are among the founding  
27 members of the Open NAND Flash Interface ("ONFI") group, whose purpose is to meet and to  
28

1 discuss standards and production of NAND flash memory products. The ONFI group has  
2 discussed with Samsung having that company join as a member.

3 43. The structure of the market also allowed Defendants to maintain and police  
4 their cartel using methods such as price signaling. For example, on March 20, 2006, Hynix  
5 warned investors that the prices of NAND flash memory could fall as much as 50% for the year.  
6 The next day, Samsung announced its disagreement, and said that prices would recover and  
7 stabilize. As of August 2006, Flash Memory prices had stabilized, in part, as a result of reduced  
8 inventory from manufacturers. "Apple to spur NAND Flash Market, firm says," Electronic  
9 News, August 9, 2006.

10 44. As a result of Defendants' conspiracy, prices for Flash Memory have been  
11 maintained at supra-competitive levels from at least 1999 through the present. Prior to 1999, the  
12 average selling price for all Flash Memory was in steady decline. Beginning in 2000 and  
13 continuing through the first quarter of 2001, the aggregate average price of Flash Memory  
14 stabilized, then increased.

15 45. While average Flash Memory prices began to decline somewhat at the end  
16 of 2001, the cartel created by Defendants operated to mitigate those declines so that prices were  
17 still at supra-competitive levels. Defendants' collusive activity still continues and has had the  
18 effect of keeping prices at supra-competitive levels.

19 46. The trend in the average prices of Flash Memory is similar to a  
20 contemporaneous price movement in the DRAM market. The pricing of, and behavior of  
21 participants in, the DRAM market during this period is currently the subject of a price-fixing  
22 investigation by the Antitrust Division of the U.S. Department of Justice ("DOJ"). Several of the  
23 Defendants named herein are either currently the subject of the DRAM investigation, or have  
24 pleaded guilty to price-fixing charges with respect to DRAM. Samsung, for example, was fined  
25 \$300 million by the United States in October 2005 for participating in DRAM price-fixing. It is  
26 also under investigation by the DOJ (along with some of the other Defendants) for fixing the  
27 prices of SRAM. The agents and employees of Samsung, Hynix, and Micron implicated in the  
28 DRAM price-fixing conspiracy are the same agents and employees that are responsible for

1 pricing SRAM and Flash Memory as well. Samsung and Hynix have pled guilty to price-fixing  
2 in the DRAM market during the period from 1999 to 2002 and have paid substantial fines for  
3 those unlawful activities (\$300 million for Samsung and \$185 million for Hynix). Micron was  
4 the amnesty applicant in the DRAM price-fixing investigation.

5 47. In October 2006, DOJ sent subpoenas to approximately 23 companies,  
6 including Samsung, Hynix, Micron, Toshiba, and Renesas, in connection with an investigation of  
7 cartel activity in the SRAM industry. A DOJ spokesperson was quoted as saying: "[t]he U.S.  
8 Department of Justice's antitrust division is conducting an investigation regarding anti-  
9 competitive practices against chief SRAM manufacturers." DOJ's SRAM investigation concerns  
10 anticompetitive conduct that was continuing at least as recently as 2005.

11 48. One commentator noted the pervasiveness of cartel activity among the  
12 Defendants and others within the overall semiconductor industry: "If the DOJ wanted to, it could  
13 just go down every line in the semiconductor industry and find the same issue," said Gartner Inc.  
14 analyst Richard Gordon. "That's because there are a relatively few number of suppliers in the  
15 chip industry and an open flow of communication between competitors and customers, who may  
16 not define price fixing the same way the DOJ does," he said." (<[http://www.computerworld.com/  
17 action/article.do?command=viewArticleBasic&taxonomyName=government&articleId=900556  
18 &taxonomyId=13&intsrc=kc\\_top](http://www.computerworld.com/action/article.do?command=viewArticleBasic&taxonomyName=government&articleId=900556&taxonomyId=13&intsrc=kc_top)>).

19 49. Defendants sell Flash Memory through various channels, including to  
20 manufacturers of electronic products and devices, and to resellers of products containing Flash  
21 Memory. These electronic products and devices are then sold to consumers, directly or indirectly,  
22 and are not altered during the course of sale.

23 50. Defendants, through their officers, directors, and employees, conducted the  
24 conspiracy by, among other things:

- 25 a. agreeing to charge prices at specified levels and otherwise to  
26 increase and maintain prices of Flash Memory sold in the United States;
- 27 b. issuing price announcements and quotations in accordance with the  
28 agreements reached;

1 c. participating in meetings and conversations, including through trade  
2 associations, to discuss the prices of Flash Memory in the United States; and

3 d. selling Flash Memory to various customers in the United States at  
4 supra-competitive prices.

5 51. Defendants' contract, combination, trust, or conspiracy was centered in,  
6 carried out, and effectuated mainly in the State of California. Therefore, all members of the Class,  
7 whether or not California residents, are entitled to recover under California law, as well as the  
8 laws of their own states.

### 9 CONCEALMENT

10 52. During the conspiracy, Defendants and their co-conspirators affirmatively  
11 and actively concealed their unlawful conduct from Plaintiff. Defendants and their co-  
12 conspirators conducted their conspiracy in secret and kept it within the confines of their higher-  
13 level executives. Defendants and their co-conspirators publicly provided pretextual and false  
14 justifications regarding their price increases. Defendants and their co-conspirators concealed the  
15 true nature of their unlawful conduct, and acts in furtherance thereof, through various means and  
16 methods to avoid detection. Plaintiff did not discover, and could not have discovered through the  
17 exercise of reasonable diligence, that Defendants and their co-conspirators were violating the  
18 antitrust laws as alleged herein until shortly before this lawsuit was started.

19 53. As a result of the active concealment of the conspiracy by Defendants and  
20 their co-conspirators, any and all applicable statutes of limitations otherwise applicable to the  
21 allegations herein have been tolled.

### 22 FIRST CLAIM FOR RELIEF

#### 23 (Violation of Section 1 of the Sherman Act, 15 U.S.C. § 1)

24 54. Plaintiff, on behalf of himself and all others similarly situated, realleges  
25 and incorporates, as if fully alleged herein, each of the allegations contained in the preceding  
26 paragraphs of this complaint, and further alleges against Defendants as follows.

27 55. Beginning at least as early as January 1, 1999 and continuing through the  
28 present, the exact dates being currently unknown to Plaintiff, Defendants and various co-



1 conspirators entered into and engaged in the continuing contracts, combinations, and conspiracies  
2 described above in restraint of trade and commerce in the United States in violation of Section 1  
3 of the Sherman Act, 15 U.S.C. § 1. These contracts, combinations, and conspiracies will continue  
4 unless enjoined pursuant to Section 16 of the Clayton Act, 15 U.S.C. § 26.

5           56. In formulating and carrying out the alleged contracts, combinations, and  
6 conspiracies, Defendants and various co-conspirators did those things that they conspired to do,  
7 including but not limited to those act alleged above, and for example:

- 8           a. fixing, raising, maintaining, and stabilizing the price of Flash  
9 Memory;
- 10           b. allocating among themselves production of Flash Memory;
- 11           c. restricting output of Flash Memory; and
- 12           d. allocating markets for Flash Memory among themselves;

13           57. The combinations, contracts, trusts, agreements, and conspiracies alleged  
14 herein has had the following effects, among others:

- 15           a. price competition in the sale of Flash Memory has been restrained,  
16 suppressed, and/or eliminated in the United States;
- 17           b. prices for Flash Memory sold by Defendants and their co-  
18 conspirators have been fixed, raised, maintained, and stabilized at artificially high, non-  
19 competitive levels throughout the United States; and
- 20           c. those persons and entities who purchased Flash Memory indirectly  
21 from Defendants and their co-conspirators have been deprived of the benefits of free and open  
22 competition.

23           58. As a direct and proximate result of the illegal combinations, contracts,  
24 trusts, agreements, and conspiracies, Plaintiff and the members of the Class have been injured and  
25 will continue to be injured in their business and property by paying more for Flash Memory  
26 purchased indirectly from the Defendants and their co-conspirators than they would have paid and  
27 will pay in the absence of the combination and conspiracy, including paying more for Flash  
28

Memory cards and other products in which Flash Memory is a component as a result of higher prices paid for Flash Memory by the manufacturers of those products.

59. Plaintiff and the Class are entitled to an injunction against Defendants, preventing and restraining the violation alleged herein.

## **SECOND CLAIM FOR RELIEF**

**(Violation of the California Cartwright Act, Cal. Bus. & Prof. Code §§ 16720, *et seq.*)**

60. Plaintiff, on behalf of himself and all others similarly situated, realleges and incorporates, as if fully alleged herein, each of the allegations contained in the preceding paragraphs of this complaint, and further alleges against Defendants as follows.

61. The unlawful conduct of Defendants, including the Defendants headquartered or based in California, was centered in and carried out within California, and Defendants' conduct within California injured all members of the Class throughout the United States. Therefore, this claim for relief under California law is brought on behalf of all members of the Class, whether or not they are California residents.

62. Beginning at least as early as January 1, 1999 and continuing thereafter to the present, the exact dates being unknown to Plaintiff, Defendants and various co-conspirators entered into and engaged in a continuing unlawful trust in restraint of the trade and commerce described above in violation of California Business and Professional Code section 16720. Defendants, and each of them, have acted in violation of section 16720 to fix, raise, stabilize, and maintain prices of, and allocate markets for, Flash Memory at supra-competitive levels.

63. For the purpose of forming and effectuating the alleged contracts, combinations, conspiracies, trusts, agreements, understandings, and concerts of action, Defendants and their co-conspirators did those things they conspired to do, including but not limited to the acts alleged above, including actions:

- a. to fix, raise, maintain, and stabilize the price of Flash Memory;
- b. to allocate amongst themselves the production of Flash Memory;
- and
- c. to allocate markets for Flash Memory amongst themselves.

64. In formulating and carrying out the alleged contracts, combinations, trusts, agreements, understandings, and concert of action, Defendants and their co-conspirators engaged in anticompetitive activities, the purpose and effect of which were and are:

- a. to artificially raise, fix, maintain, or stabilize the prices of Flash Memory;
- b. to allocate among themselves Flash Memory production, markets and customers;
- c. to control supply of Flash Memory; and
- d. to facilitate, effectuate, and implement the contracts, combinations, trusts, agreements, undertaking fixed concerts of action, and conspiracies.

65. As a direct and proximate result of the illegal contracts, combinations, trusts, conspiracies, agreements, understandings and concerts of action, Plaintiff and the members of the Class have been injured in their business and property in that they paid more for Flash Memory than they otherwise would have paid in the absence of Defendants' unlawful conduct.

66. As a result of Defendants' violation of California Business and Professions Code section 16720, Plaintiff seeks treble damages and the costs of suit, including reasonable attorneys' fees, pursuant to the California Business and Professions Code section 16750(a).

### **THIRD CLAIM FOR RELIEF**

**(Violation of the California Unfair Competition Law,  
Cal. Bus. & Prof. Code §§ 17200, *et seq.*)**

67. Plaintiff, on behalf of himself and all others similarly situated, realleges and incorporates, as if fully alleged herein, each of the allegations contained in the preceding paragraphs of this complaint, and further alleges against Defendants as follows.

68. Defendants' unlawful conduct was centered in and carried out chiefly within the State of California, and Defendants' conduct within California injured all members of the Class throughout the United States. Therefore, this claim for relief under California law is brought on behalf of all members of the Class, whether or not they are California residents.

1           69.     Beginning at least as early as January 1, 1999 and continuing thereafter to  
2     the present, the exact dates being unknown to Plaintiff, Defendants committed and continue to  
3     commit acts of unfair competition, as defined by California Business and Professions Code  
4     section 17200, *et seq.*, commonly known as the Unfair Competition Law, by engaging in the acts  
5     and practices specified above.

6           70.     Plaintiff and the members of the Class bring this claim pursuant to  
7     California Business and Professions Code sections 17203 and 17204, to obtain restitution and/or  
8     disgorgement from Defendants for the acts, as alleged herein, that violate the Unfair Competition  
9     Law.

10          71.     Defendants' acts, omissions, misrepresentations, practices, and non-  
11     disclosures, as alleged herein, constitute a common course of conduct of unfair competition by  
12     means of unfair, unlawful and/or fraudulent business acts or practices within the meaning of  
13     California Business and Professions Code section 17200, *et seq.*, in that, for example:

14                 a.     they are violations of the California Business and Professions Code  
15     sections 16720, *et seq.*, set forth above;

16                 b.     violations of the Sherman Act, 15 U.S.C. § 1;

17                 c.     Defendants' acts and practices violate the common law; and

18                 d.     Defendants' acts, omissions, misrepresentations, practices, and  
19     nondisclosures, as described above, whether or not in violation of the California Business and  
20     Professions Code sections 16720, *et seq.*, and whether or not concerted or independent acts, are  
21     otherwise unfair, unlawful and/or fraudulent;

22          72.     The illegal conduct alleged herein is continuing and there is no indication  
23     that Defendants will not continue such activity in the future.

24          73.     The unlawful and unfair business practices of Defendants, and each of  
25     them, as described above, have caused and continue to cause Plaintiff and the members of the  
26     Class to pay supra-competitive and artificially-inflated prices for Flash Memory. Plaintiff and the  
27     members of the class suffered injury in fact and lost money or property as a result of the unfair  
28     competition.

1           74. As alleged in this Complaint, Defendants and their co-conspirators have  
2 been unjustly enriched as a result of their wrongful conduct and by Defendants' unfair  
3 competition. Plaintiff and the members of the Class are accordingly entitled to equitable relief  
4 including restitution and/or disgorgement of all revenues, earnings, profits, compensation and  
5 benefits which may have been obtained by Defendants as a result of such business practices,  
6 pursuant to California Business and Professions Code sections 17203 and 17204.

7                           **FOURTH CLAIM FOR RELIEF**

8                           **(Violation of State Antitrust and Unfair Competition Laws)**

9           75. Plaintiff, on behalf of himself and all others similarly situated, realleges  
10 and incorporates, as if fully alleged herein, each of the allegations contained in the preceding  
11 paragraphs of this complaint, and further alleges against Defendants as follows.

12           76. By reason of the foregoing, Defendants have entered into agreements in  
13 restraint of trade in violation of Alabama Code §§ 8-10-1, *et seq.*

14           77. By reason of the foregoing, Defendants have entered into agreements in  
15 restraint of trade in violation of Alaska Stat. §§ 45, 50, 471, *et seq.*

16           78. By reason of the foregoing, Defendants have entered into agreements in  
17 restraint of trade in violation of Arizona Revised Stat. §§ 44-1401, *et seq.*

18           79. By reason of the foregoing, Defendants have entered into agreements in  
19 restraint of trade in violation of District of Columbia Code Ann. §§ 28-4503, *et seq.*

20           80. By reason of the foregoing, Defendants have entered into agreements in  
21 restraint of trade in violation of Florida Stat. §§ 501.207, 501.213, *et seq.*

22           81. By reason of the foregoing, Defendants have entered into agreements in  
23 restraint of trade in violation of Hawaii Rev. Stat. §§ 480-3, 480-14, *et seq.*

24           82. By reason of the foregoing, Defendants have entered into agreements in  
25 restraint of trade in violation of Iowa Code §§ 553.1, *et seq.*

26           83. By reason of the foregoing, Defendants have entered into agreements in  
27 restraint of trade in violation of Kansas Stat. Ann. §§ 50-101, *et seq.*  
28

1           84. By reason of the foregoing, Defendants have entered into agreements in  
2 restraint of trade in violation of Louisiana Revised Statutes §§ 51:1401, *et seq.*

3           85. By reason of the foregoing, Defendants have entered into agreements in  
4 restraint of trade in violation of Maine Rev. Stat. Ann. 10, §§ 1101, *et seq.*

5           86. By reason of the foregoing, Defendants have entered into agreements in  
6 restraint of trade in violation of Massachusetts Gen. Laws Ch. 93, *et seq.*

7           87. By reason of the foregoing, Defendants have entered into agreements in  
8 restraint of trade in violation of Michigan Comp. Laws. Ann. §§ 445.773, *et seq.*

9           88. By reason of the foregoing, Defendants have entered into agreements in  
10 restraint of trade in violation of Minnesota Stat. §§ 325D.52, *et seq.*

11           89. By reason of the foregoing, Defendants have entered into agreements in  
12 restraint of trade in violation of Mississippi Code Ann. § 75-21-1, *et seq.*

13           90. By reason of the foregoing, Defendants have entered into agreements in  
14 restraint of trade in violation of Nebraska Rev. Stat. Ann. §§ 59-801, *et seq.*

15           91. By reason of the foregoing, Defendants have entered into agreements in  
16 restraint of trade in violation of Nevada Rev. Stat. Ann. §§ 598A, *et seq.*

17           92. By reason of the foregoing, Defendants have entered into agreements in  
18 restraint of trade in violation of New Mexico Stat. Ann. §§ 57-1-1, *et seq.*

19           93. By reason of the foregoing, Defendants have entered into agreements in  
20 restraint of trade in violation of North Carolina Gen. Stat. §§ 75-1, *et seq.*

21           94. By reason of the foregoing, Defendants have entered into agreements in  
22 restraint of trade in violation of North Dakota Cent. Code §§ 51-08.1-01, *et seq.*

23           95. By reason of the foregoing, Defendants have entered into agreements in  
24 restraint of trade in violation of South Dakota Codified Laws Ann. §§ 37-1, *et seq.*

25           96. By reason of the foregoing, Defendants have entered into agreements in  
26 restraint of trade in violation of Tennessee Code Ann. §§ 47-25-101, *et seq.*

27           97. By reason of the foregoing, Defendants have entered into agreements in  
28 restraint of trade in violation of Vermont Stat. Ann. 9 §§ 2453, *et seq.*



98. By reason of the foregoing, Defendants have entered into agreements in restraint of trade in violation of West Virginia §§ 47-18-1, *et seq.*

99. By reason of the foregoing, Defendants have entered into agreements in restraint of trade in violation of Wisconsin Stat. §§ 133.01, *et seq.*

100. Class Members in each of the states listed above paid supra-competitive, artificially inflated prices for Flash Memory. As a direct and proximate result of Defendants' unlawful conduct, such members of the Class have been injured in their business and property in that they paid more for Flash Memory than they otherwise would have paid in the absence of Defendants' unlawful conduct.

#### **FIFTH CLAIM FOR RELIEF**

##### **(Unjust Enrichment and Disgorgement of Profits)**

101. Plaintiff, on behalf of himself and all others similarly situated, realleges and incorporates, as if fully alleged herein, each of the allegations contained in the preceding paragraphs of this complaint, and further alleges against Defendants as follows.

102. Defendants have been unjustly enriched through overpayments by Plaintiff and Class members and the resulting profits.

103. Under common law principles of unjust enrichment, Defendants should not be permitted to retain the benefits conferred by overpayments of supra-competitive prices by Plaintiff and members of the Class.

104. Plaintiff seeks disgorgement of all profits resulting from such overpayments and establishment of a constructive trust from which Plaintiff and Class members may seek restitution.

#### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff prays:

1. That the Court determine that the claims alleged herein under the Sherman Act, the California Cartwright Act, the California Unfair Competition Law, the state antitrust and unfair competition laws, and the common law may be maintained as a class action under Federal Rules of Civil Procedure 23(a), (b)(2), and (b)(3);

1                   2.       That Defendants, their affiliates, successors, transferees, assignees, and the  
2 officers, directors, partners, agents, and employees thereof, and all other persons acting or  
3 claiming to act on their behalf, be permanently enjoined and restrained from in any manner  
4 continuing, maintaining, or renewing the conduct, contract, trust, understanding, conspiracy, or  
5 combination alleged herein, or from entering into any other conduct, contract, trust,  
6 understanding, conspiracy, or combination having a similar purpose or effect, and from adopting  
7 or following any practice, plan, program, or device having a similar purpose or effect;

8                   3.       That the unlawful conduct, contract, conspiracy or combination alleged  
9 herein be adjudged and decreed to be:

- 10                   a.       a restraint of trade or commerce in violation of section 1 of the  
11 Sherman Act;  
12                   b.       a violation of the California Cartwright Act;  
13                   c.       a violation of the California Unfair Competition law;  
14                   d.       violations of the state antitrust and unfair competition laws  
15 identified in the Fourth Claim for Relief; and  
16                   e.       acts of unjust enrichment.

17                   4.       That Plaintiff and the Class recover damages, as provided law, and that a  
18 joint and several judgment in favor of Plaintiff and the Class be entered against the Defendants in  
19 an amount to be trebled in accordance with applicable laws;

20                   5.       That Plaintiff and members of the Class be awarded restitution, including  
21 disgorgement of profits obtained by Defendants as a result of their acts of unfair competition and  
22 acts of unjust enrichment;

23                   6.       That Plaintiff and members of the Class be awarded pre- and post-  
24 judgment interest, and that that interest be awarded at the highest legal rate from and after the  
25 date of service of the initial complaint in this action;

26                   7.       That Plaintiff and members of the Class recover their costs of this suit,  
27 including reasonable attorneys' fees as provided by law; and  
28

1                   8.       That Plaintiff and members of the Class receive an award for such other  
2 and further relief as the nature of the case may require or as the Court deems just, equitable, and  
3 proper.

4       Dated: April 11, 2007

CAREY & DANIS, LLC

6                   By:   
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**JURY TRIAL DEMAND**

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiff demands  
a trial by jury for all issues so triable.

Dated: April 11, 2007

CAREY & DANIS, LLC

By:

  
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